

**2022 OSA City of Good Thunder Investigation
Resulted in Probation/Stay of Adjudication**

January 15, 2025

The Office of the State Auditor (OSA) received concerns about a purchase of real property by the City of Good Thunder (City) that raised several potential conflict of interest concerns.

In cooperation with the Blue Earth County Sheriff's Office and the Blue Earth County Attorney's Office, the OSA reviewed City financial records. Based on this review, the OSA prepared an Investigative Report, finding apparent violations of Minnesota's conflict of interest laws. The OSA provided its Investigative Report to the Blue Earth County Attorney's Office on September 29, 2022, for their use in possible further criminal investigation. At that time, the OSA's Investigative Report was not public, pursuant to Minn. Stat. § 6.715.

Subsequently, on October 20, 2022, the Mayor was charged with embezzlement of public funds, theft, and public officers - interest in contract violations.¹ In a Petition to Enter Plea of Guilty, the Mayor stated, "On or about August 25, 2020, in the County of Blue Earth, State of Minnesota, I, as a public officer who is authorized to take part in any manner in making any sale, lease, or contract in official capacity, voluntarily had a personal financial interest in the sale, lease or contract or personally benefit financially therefrom."² On October 4, 2024, a plea hearing was held and the City Mayor pleaded guilty to Public Officers – Interest in Contract Violation, a gross misdemeanor, in violation of Minn. Stat. § 471.87.³ On January 14, 2025, the court ordered supervised probation for 2 years, a stay of adjudication, and that successful completion of probation will result in a dismissal.⁴

With the completion of the prosecution, the OSA now is able to make available a public version of the Investigative Report given to law enforcement in 2022. A copy of this public version is attached.

¹ See State of Minnesota District Court File No. 07-CR-22-3677.

² Petition to Enter Plea of Guilty in Felony Case Pursuant to Rule 15, p.6, File no. 07-CR-22-3677 (Sept. 26, 2024).

³ Transcript of Hearing: Plea Hearing, p. 7, File No. 07-CR-22-3677 (Oct. 4, 2024).

⁴ Order, Warrant of Commitment, pp. 1-2, File No. 07-CR-22-3677 (Jan. 14, 2025).



INVESTIGATIVE REPORT
City of Good Thunder

January 15, 2025
PUBLIC VERSION¹

Executive Summary

The Office of the State Auditor (OSA) received concerns about a purchase of real property by the City of Good Thunder (City) that raised several potential conflict of interest concerns. Specifically, the OSA reviewed concerns that the City (1) purchased real property using a purchase agreement that benefitted the City's Mayor, (2) contracted with the Mayor's business, (3) allowed the Mayor to perform work on a City project, possibly as a subcontractor, and (4) comingled City invoices with invoices that appear to be for the Mayor's business.

During its review, the OSA reviewed public property records, City Council meeting minutes, audio recordings of City Council meetings, and certain City financial documents. Based on this review, the OSA found that:

1. The Mayor, a public officer authorized to make a City sale, lease, or contract in an official capacity, appears to have had a personal financial interest in or personally benefitted financially from a City purchase agreement in violation of Minn. Stat. § 471.87.
2. Based on a review of City Council minutes provided to the OSA, the City did not follow the Open Meeting Law requirements of Minn. Stat. § 13D.05, subd. 3(c)(3) for approval of the City purchase agreement.
3. The City failed to follow the requirements of Minn. Stat. § 471.89 when it contracted with the Mayor's business for services.
4. It appears the Mayor may have performed work on a City project as a subcontractor in a manner "contrary to and violative of public policy" under an Attorney General opinion.
5. It appears the City paid \$24,671.30 for concrete materials that were shipped to the Mayor's business location, and paid for certain non-City expenses.

These findings indicate violations of Minnesota Law. This report summarizes the OSA's findings and provides additional information about these potential violations.²

¹ A not public version of the Investigative Report was provided to the Blue Earth County Attorney on September 29, 2022, as authorized by Minn. Stat. § 6.715, subd. 3.

² This Investigative Report covers certain issues reviewed by the OSA. Nothing herein should be interpreted to imply the absence of other issues or approval of any act or transaction not mentioned.

Investigative Report

Background

According to its web site, the City is a statutory City with a population of 564. The City is governed by an elected City Council, which includes the Mayor and four City Council Members. The City's total primary government expenses for the year ended December 31, 2021, were \$933,264.³ The City reported land for its business type activity (water utility) with a total value of \$23,320 in 2020 and \$73,320 in 2021.⁴

Minnesota Law

City Governance

In general, a city acts through its governing body, the elected city council. Council members' statutory duties (with very few exceptions) are to be performed by the city council as a whole. Individual council members, including mayors, usually do not have authority to act unilaterally on behalf of the city. The city council has full authority over the financial affairs of the city, and has the power to make city contracts.⁵

Actions of a governing body typically must take place in a meeting open to the public.⁶ The Minnesota Supreme Court has stated that this serves three purposes: prohibiting public bodies from hiding their decision-making process from the public; allowing the public to be informed; and allowing the public to present its views.⁷

Statutory Conflicts of Interest and City Contracts for the Purchase of Land

Generally, a public officer authorized to make a sale, lease, or contract in an official capacity must not have a personal financial interest in that sale, lease, or contract, or personally benefit financially from it.⁸ A "public officer" includes at least those public officers that approve contracts, which includes each member of a city council, including the mayor. An additional statute applicable to cities, Minn. Stat. § 412.311, states "[e]xcept as provided in sections 471.87 to 471.89, no member of a council shall be directly or indirectly interested in any contract made by the council."⁹ A 1952 attorney general opinion

³ See CITY OF GOOD THUNDER, GOOD THUNDER, MINNESOTA AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2021.

⁴ *Id.* See also CITY OF GOOD THUNDER, GOOD THUNDER, MINNESOTA AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2020.

⁵ See Minn. Stat. §§ 412.221, subd. 2; 412.241.

⁶ See Minn. Stat. §§ 13D.01, 412.191, and League of Minnesota Cities Information Memo, "Meetings of City Councils."

⁷ *Claude v. Collins*, 518 N.W.2d 836, 841 (Minn. 1994).

⁸ See Minn. Stat. § 471.87. See Op. Att'y Gen. No. 90-E-5, (Nov. 13, 1969), and Op. Att'y Gen. No. 90a-1 (Oct. 7, 1976).

⁹ In *Singewald v. Minneapolis Gas Co.*, 142 N.W.2d 739 (1966), the Minnesota Supreme Court stated "in our opinion the prohibition of § 412.311 (in contrast to that set out in § 471.87 which forbids a "personal

determined that a subcontract with a city council member on a city project was “contrary to and violative of public policy.”¹⁰

In addition, a city’s purchase of land owned by a city council member or the sale of city land to a city council member is generally prohibited.¹¹ Moreover, the 1955 Attorney General opinion explains that if a transaction is prohibited under Minn. Stat. § 471.87, it makes no difference whether or not the city council member votes on it.

Finally, with respect to a city council’s consideration of land sales or purchases, a provision of the Minnesota Open Meeting Law, Minn. Stat. § 13D.05, subd. 3(c)(3), provides that a city council may close a meeting “to develop or consider offers or counteroffers for the purchase or sale of real or personal property.” This statute also states “[a]n agreement reached that is based on an offer considered at a closed meeting is contingent on approval of the public body at an open meeting. The actual purchase or sale must be approved at an open meeting after the notice period required by statute or the governing body’s internal procedures, and the purchase price or sale price is public data.”¹²

Statutory Conflicts of Interest Exception - City Contracts for Goods or Services

An exception to the general rule, in Minn. Stat. § 471.88, subd. 5, authorizes a governing body, by unanimous vote, to contract for **goods or services** with an interested public officer if the contract is one for which competitive bids are not required by law.¹³

To use this broad exception, however, the governing body and the interested officer must follow the procedures set forth in Minn. Stat. § 471.89. First, the governing body must “authorize the contract in advance of its performance by adopting a resolution setting out the essential facts and determining that the contract price is as low as or lower than the price at which the commodity or services could be obtained elsewhere.” Second, before claims are paid on the contract, the interested officer must file with the clerk of the governing body an affidavit providing, among other things, an itemization of the commodity or services furnished, the interest of the officer in the contract, and a statement that to the best of the officer’s knowledge and belief the contract price is as low as, or lower than, the price at which the commodity or services could be obtained from other sources.

The statute states “[a] contract made pursuant to section 471.88, subdivision 5, is void unless the procedure prescribed by subdivisions 2 and 3 is followed.”¹⁴

financial interest” by public officers in situations such as this) was intended to bar participation in council action by one directly or indirectly interested in the contemplated contract, regardless of his good faith and notwithstanding the fairness or reasonableness of the agreement involved.”

¹⁰ See Op. Att’y Gen. No. 90a-1 (May 16, 1952).

¹¹ See, e.g., Op. Att’y Gen. 469-a-12 (Aug. 30, 1961), 90a-1 (April 14, 1960), and 90-a-1 (Sept. 28, 1955).

¹² See Minn. Stat. § 13D.05, subd. 3(c)(3).

¹³ Minn. Stat. § 471.88, subds. 1 and 5 (emphasis added).

¹⁴ Minn. Stat. § 471.89 Subd. 1.

OSA Review and Findings

City Contract for the Purchase of Land - Purchase Agreement

Property records indicate the City purchased a property at 530 Sherman Street (the new City Property) on July 2, 2021.¹⁵ The OSA reviewed copies of the City's purchase agreement and warranty deed for the new City Property, meeting minutes in which the City Council discussed the new City Property, and the audio recordings of certain meetings.¹⁶

The Mayor signed a purchase agreement on behalf of the City dated June 10, 2021, for the new City Property.¹⁷ It appears the City agreed to purchase 12,000 square feet of real property for \$50,000.¹⁸ The City's purchase agreement required the seller to comply with certain contingencies in order for the City to purchase the new City Property. The contingencies were:

1. "the execution and recording of a Driveway Easement and Maintenance Agreement related to adjacent property between Seller and [Business A]..." and
2. "[s]eller closing on its sale of adjacent property to [Business A]..."¹⁹

The City purchased the new City Property with city check number 16107, dated June 9, 2021, for \$50,000.

Secretary of State's business filings for [Business A] report that business's registered office address was [a residential address]. Blue Earth County (County) public property records appear to list the City Mayor as the primary owner of the residential home at this address. It appears [Business A] is a business owned by the Mayor.²⁰

¹⁵ See eCRV ID 1278668 available online at https://www.mndor.state.mn.us/ecrv_search/app/openPublicEcrvView?ecrvId=1278668&countyFinal=true&title=View+Summary+for+Completed+eCRV+ID+1278668.

¹⁶ The City closed the August 17, 2020, City Council meeting to discuss the new City Property. The City is required by Minn. Stat. 13D.05 to record and keep on file all closed meetings, except those closed under the attorney-client privilege. The audio recording of the closed City meeting that occurred on August 17, 2020, reveals that the City Council briefly discussed possible future City uses for the new City Property. The Mayor introduced the topic, voiced several thoughts in support of the purchase, provided details about the complications the Mayor's business was encountering, and explained discussions he had with the former owner, including a purchase price (\$60,000) for the parcel that then consisted of the new City Property and the adjoining property for the Mayor's business. A council member noted that adding contingencies to the purchase agreement "locks" the seller into selling certain property to the Mayor.

¹⁷ See Purchase Agreement between [the seller] and the City of Good Thunder dated June 10, 2021.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ It appears the address adjacent to the new City Property is 535 Main Street, Good Thunder, Minnesota 56037, the registered address of [Business B]. The Original filing date for [Business B] is December 15, 2020. County Property records list [Business A] and [the residential address] as the Mailing address for property tax statements

Before the City purchased the property, the City received an email on January 21, 2021, from the sellers that said:

I was just following up on the purchase agreement for 530 Sherman St? Has the council reviewed and approved [the Mayor] to sign? We are looking to get this finalized soon so [the Mayor] can continue building his fuel station as he is currently building on our property, so we would like to get that all taken care of for liability reasons.²¹

The September 2021 City Council meeting minutes report that the Mayor responded to a question from a citizen about the new City Property. The Mayor stated "the city paid \$50,000 for that property, which is 80 x 100 ft" and he reported that he "paid \$10,000 for his 40 x 100 ft" section."²² It appears the Mayor closed on a sale of adjacent property consistent with the second contingency of the City purchase agreement, however there appears to be uncertainty about the actual size of the new City Property.

In addition, the OSA reviewed the City Council's meeting minutes around the date of the purchase agreement. None of the reviewed meeting minutes documented a City Council vote to approve the purchase agreement. It therefore appears the City did not follow the requirements of Minn. Stat. § 13D.05, subd. 3(c)(3) for this purchase.

Based on this review, it appears the contingencies in the City's purchase agreement constitute a personal financial interest or personal financial benefit to the Mayor. It therefore appears that the Mayor, a public officer authorized to make a City sale, lease, or contract in an official capacity, had a personal financial interest in or personally benefitted financially from the City's purchase agreement in violation of Minn. Stat. § 471.87.²³

City Contract with the Mayor's Business for Services

The OSA reviewed invoices the City received from any of the Mayor's businesses from January of 2020 through April 30, 2022, and check stubs for any payments made to pay the invoices. This included two invoices from [Business C] dated August 25, 2020, and April 19, 2022, for rock hauling.²⁴ The check stub for City check number 15847 shows that the City paid [Business C] \$1,723.33, the total amount of the August 25, 2020, invoice, on September 16, 2020. The OSA was informed that the City had not yet paid the April 19, 2022, invoice which totaled \$1,000.56 at the time of the request.

for 535 Main Street, Good Thunder, Minnesota 56037. The Mayor is also reported as the Chief Executive Officer of [Business C] in Secretary of States filing for the business corporation.

²¹ See January 21, 2021, email to the City (subject line: 530 Sherman St).

²² See September 13, 2021, City Council Meeting Minutes.

²³ The contract the City entered into is not one for goods or services, so it appears the exceptions provided for in Minn. Stat. § 471.88 do not apply. It does not appear any other exceptions to the general provision in Minnesota Law (i.e. exceptions for EDA Loans) apply to this City contract.

²⁴ The Mayor is reported as the "Chief Executive Officer" of [Business C] in Secretary of State filing for the business corporation.

The documents indicate that the City did contract with the Mayor's business. The contractual relationship is not, in and of itself, contrary to the conflict of interest laws, since an exception to the general conflicts of interest rule in Minn. Stat. § 471.87, allows that a governing body, by unanimous vote, may contract for goods or services with an interested public officer if the contract is one for which competitive bids are not required by law.²⁵ To use this broad exception, however, the governing body and the interested officer must follow the procedures set forth in Minn. Stat. § 471.89. Here, the contract for services from the Mayor's business did not require competitive bids. However, the City Council meeting minutes do not document that the City Council approved this contract for goods or services with the Mayor's business by unanimous vote, and the City reported that it did not pass a resolution nor did the Mayor submit an affidavit when the Mayor's business sent claims to the City. The City did not follow the requirements of Minn. Stat. § 471.89, when it contracted for services from the Mayor's business. Under the statute, the failure renders the contract void.²⁶

City Contract Performed in part by the Mayor

Certain City Council meeting minutes in 2021 discuss a City sidewalk project.²⁷ The City reported receiving two estimates for the replacement of sidewalks located at Sherman Street and Houk Street during the August 2, 2021, City Council special meeting. The City received two estimates for the project which both included a rate for "removal," however the City discussion about the project only appears to consider one of the estimates.²⁸ The Council Meeting minutes document that the Mayor had conversations with the contractor who provided the estimate the City discussed, about modifications to the project.²⁹ The meeting minutes also document that the Mayor would perform some of the work, if the City hired the contractor.³⁰ The City hired the contractor and paid him \$54,938 to replace certain City sidewalks.³¹ The meeting minutes document that the Mayor voted on this matter.³² The OSA was informed that the contractor subcontracted bobcat work to remove the old sidewalk to the Mayor. City

²⁵ Minn. Stat. § 471.88, subs. 1 and 5. It appears the City did not document the City Council's vote to approve City claims at each City Council meeting until September 13, 2021, so the OSA could not determine if the unanimous approval was given for certain claims.

²⁶ Minn. Stat. § 471.89, subd. 1.

²⁷ See June 14, 2021, July 12, 2021, August 18, 2021, September 13, 2021, November 8, 2021, and December 13, 2021, City Council meeting minutes.

²⁸ See August 2, 2021, City Council special meeting minutes.

²⁹ The August 2, 2021, special meeting minutes document that the Mayor said "... I got a bid about taking out the curb, [the contractor] would hand pour it and raise the curb up...."

³⁰ The August 2, 2021, special meeting minutes document that the Mayor said "... I am going to help them pull the curb."

³¹ The City paid the vendor \$54,938.03 with City check number 17312 on December 30, 2021. The OSA noted that this City check image shows the signature of the Mayor only. Minnesota law requires multiple signatures on city checks. See Minn. Stat. § 412.271, subs. 1 ("No disbursement of city funds, including funds of any municipal liquor dispensary operated by the city, shall be made except by an order drawn by the mayor and clerk upon the treasurer.") and 3 (City order becomes a check when signed by the treasurer).

³² See August 2, 2021, City Council special meeting minutes and the January 10, 2022, City Council meeting minutes.

Council meeting minutes confirm that he was on-site working on the project.³³ City records do not document whether the Mayor was paid for his work on the project.

The Attorney General has opined that a city council member subcontract on a city project was “contrary to and violative of public policy.”³⁴

It therefore appears the Mayor may have performed work on a City project in a manner “contrary to and violative of public policy” under the Attorney General opinion.

Invoices for the Mayor’s business location were sent to the City and comingled with City invoices

During the OSA review, the OSA was informed that the City received invoices from a concrete vendor that appeared to bill the City for materials shipped to the Mayor’s business address. The OSA reviewed 28 invoices for materials from the concrete vendor dated July of 2021 through October of 2021. Fifteen of the invoices document materials billed to the City that indicate the materials should “ship to” the Mayor’s business address at 535 Main Street. A spreadsheet summarizing these invoices is included in Attachment B to this report. These fifteen invoices were paid by City checks dated from August of 2021 through March of 2022. In total the City paid \$24,671.30 for these invoices.³⁵

The OSA reviewed City Council meeting minutes for information about the invoices. The City Council meeting minutes from May of 2021 document that the City discussed a bill “submitted” to the City “for concrete reimbursement for” sidewalks in front of the Mayors business “in the amount of \$4,004.72.”³⁶ The City Council approved this bill and the City Mayor abstained, however the amount approved by the City Council and the timing of the project do not appear to correspond with any of the invoices reviewed by the OSA.³⁷ The OSA reviewed posted pictures and statements from a social media site for [Business B] the Mayor’s business. The business social media post on May 4, 2021, shows pictures of concrete being poured in the parking lot of the business and stated “Sidewalk and approach completed.”

³³ See for example the December 13, 2021, City Council Meeting Minutes. The City reported, and certain meeting minutes’ document that the City Maintenance employee was also on-site working on the project.

³⁴ See Op. Att’y Gen. No. 90a-1 (May 16, 1952). In this opinion the AG noted that “Conditions and circumstances might arise out of the performance of the contract...and payments to be made thereunder which would involve the exercise of judgement by the members of the council. The council represents the [city] and must discharge its duties for the best interests of the [city]. In these circumstances, a conflict might arise between the public interests of the [city] and the private interests of the contractor which might necessarily involve the rights of a subcontractor.” This analysis would seem to apply if the Mayor was a subcontractor on the City sidewalk project.

³⁵ See City check numbers 16192, 17278, 16229, 17367 (replaced 17310), & 17385. The OSA noted that City Check no 17367 for \$4,347.38 was not signed by the City Clerk/Treasurer. Only the Mayor’s signature appears on this check image.

³⁶ See May 17, 2021, City Council Meeting Minutes.

³⁷ See May 17, 2021, City Council Meeting Minutes. The OSA requested and obtained from the City bank statements and check images from January of 2019 through April of 2022. The OSA reviewed the City’s bank statements and check images and did not find a City Check written for this amount.

The City Council's meeting minutes do not document any further discussion about sidewalk replacement at the Mayor's business.³⁸

Pictures posted to the social media site for [Business B] show additional concrete work at this business location in postings dated August 8, 2021, October 3, 2021, October 12, 2021, and October 16, 2021.

The OSA received and reviewed a copy of a check signed by the Mayor from the bank account of [Business A] to the City for \$975 dated April 19, 2022. The memo of the check notes "cement." The OSA was informed the Mayor wrote this check to reimburse the City for some of the concrete material it paid for.

It appears the City paid \$24,671.30 for concrete materials that were shipped to the Mayor's business location and that this use of public funds paid for certain non-City expenses; the City has not produced documentation demonstrating how much of this amount, if any, was for legitimate City expenses.

Conclusions

Based on this review the OSA concludes that:

1. The Mayor, a public officer authorized to make a City sale, lease, or contract in an official capacity, appears to have had a personal financial interest in or personally benefitted financially from a City purchase agreement in violation of Minn. Stat. § 471.87.
2. Based on a review of City Council meeting minutes provided to the OSA, the City did not follow the Open Meeting Law requirements of Minn. Stat. § 13D.05, subd. 3(c)(3) for approval of the City purchase agreement.
3. The City failed to follow the requirements of Minn. Stat. § 471.89 when it contracted with the Mayor's business for services.
4. It appears the Mayor performed work on, and may have benefitted from a City project as a subcontractor.
5. It appears the City paid \$24,671.30 for concrete materials shipped to the Mayor's business location, and paid for certain non-City expenses.

This report summarizes the OSA's findings and provides additional information about the apparent violations of Minnesota Law.

³⁸ In contrast, the City discussed two different invoices from July of 2021, the City received from the concrete vendor for materials delivered to another address in its November 8, 2021, meeting minutes which document that the City determined that the invoices were "for the city shop" and the City Council "agreed they are our bills and should be paid."